IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CRIMINAL APPEAL NO.145/1988
(Om Prakash Vs. State)

Date of order : 7.7.2006

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. M.K. Garg with
Mr. Anil Joshi, for the appellant.
Mr. L.R. Upadhyay, Public Prosecutor.

By way of filing the present appeal, the appellant has challenged the judgment dated 16.2.1988 passed by Additional Sessions Judge, Raisinghnagar in Sessions Case No.52/1986 whereby while acquitting the accused-appellant for offence under Sections 302 and 376 I.P.C., the trial court convicted the appellant for offence under Section 366 I.P.C. and sentenced him to five years RI with fine of Rs.1000/- and in default of payment of fine to further undergo one month RI.

It is contended by the learned counsel for the appellant that the judgment rendered by learned trial court is erroneous to the extent of convicting

the appellant for offence under Section 366 I.P.C. because earlier challan was filed against the appellant for offence under Sections 302, 376 and 366 I.P.C. and according to the facts of the case, FIR was filed by Mst. Shanti – wife of deceased – Budh Ram on 26.6.1986 wherein she stated that her husband used to go for work on daily wages in Vijaynagar and his son Balbir is also employee in Sardarpura and resides in the village. It was further stated that on 26.6.1986, her husband went from the house at 6 a.m. to Mandi Vijaynagar but did not return in the evening, then she sent her son Bintu with meals for him but he returned back at 2 p.m. and stated that Om Prakash along with one Mangtu Ram were also in the village on that day and they went towards Vijaynagar. It was also stated by author of FIR that Om Prakash used to come to their house and in the evening all the inmates i.e. she herself, her daughter Murti, her daughter Amarjeet and one younger son were sleeping in 'bakhal'. It was also stated that her brother-in-law – Sohan Lal also came there and slept there on that day and upto 2 a.m. in the night she waited for her husband but he did not return till 5 O' clock. On 27.6.1986, in the morning when she got up she found that her daughter Amarjeet was not found on her bed, then she asked Mohanlal and her children to search Amarjeet. All the family members including children made search and son of author of FIR went towards Vijaynagar to call his father but after sometime he came back and said that

his father is lying near a Pulia, then, they all went there and saw that her husband was lying dead there. She raised suspicion that her husband has been murdered by Om Prakash and he has taken away her daughter Amarjeet also. Upon this FIR, after investigation, challan was filed and regular trial took place and in all 16 witnesses were produced by prosecution to prove its case and thereafter, statements under Section 313 Cr.P.C. were recorded in which, it was stated by the appellant that prosecution story is concocted one and further it was stated that author of FIR – Mst. Shanti herself was having illicit relations with the husband of her sister-in-law – Sohan Lal and he was having relation with Amarjeet - daughter of Mst. Shanti and Amarjeet was residing with him with her consent and she was pregnant also and due to this enmity, he has been falsely implicated in this case. He made allegations against Mst. Shanti and Sohan Lal that they committed murder of Budhram and falsely implicated him. After full-fledged trial, the trial court acquitted, the accused-appellant for offence under Sections 302 and 376 I.P.C. but recorded the finding of guilt against the appellant for commission of offence under Section 366 I.P.C. while holding that Mst. Amarjeet was below 18 years of age and her consent to live with the appellant is immaterial to hold him guilty for offence under Section 366 I.P.C. Learned counsel for the appellant submitted that the trial court disbelieved major part

of the prosecution story and acquitted the appellant for offence under Sections 302 and 376 I.P.C. Therefore, it is clear cut case where the prosecution has failed to prove its case beyond reasonable doubt. Learned trial court has committed an error while convicted the appellant for offence under Section 366 I.P.C. because Amarjeet – daughter of Mst. Shanti was living with the appellant with her consent and Mst. Shanti was having illicit relations with her sister's husband Sohan Lal and due to this enmity, the appellant was falsely implicated in this case.

Without prejudice to the above arguments, learned counsel for the appellant has invited the attention of this Court towards the judgment rendered by Hon'ble Supreme Court in case of Rajesh & Ors. Vs. State of Maharashtra, reported in 1998 Cr.L.R. (SC) 624 and contended that in the said case, sentence awarded to the accused was reduced from two years to one year on the ground that incident took place in the year 1991. Learned counsel for the appellant while citing the above judgment contended that in the present case, incident is of the year 1986 and the appeal is pending before this Hon'ble Court since 1988, thus, near-about 20 years have elapsed, therefore, in the interest of justice, the sentence awarded to the appellant, which is five years RI may be reduced to already undergone by him. It is submitted that the appellant remained in custody from

7.7.1986 to 23.4.1988. It is further urged that the appellant is very poor person, therefore, fine imposed upon him may also be set aside. No other argument is made by the learned counsel for the appellant.

Learned Public Prosecutor vehemently opposed the prayer so made by the learned counsel for the appellant and contended that the learned trial court has rightly convicted the appellant for offence under Section 366 I.P.C.

I have considered the arguments made by the learned counsel for the appellant as well as learned Public Prosecutor and gone through the impugned judgment as well as the record of the case and scrutinized the evidence on record. I have also gone through the judgment cited by the learned counsel for the appellant.

The appellant was charged for offence under Sections 302, 376 and 366 I.P.C. and after full-fledged trial, the appellant was acquitted for offence under Sections 302 and 376 I.P.C. but was convicted for offence under Section 366 as above. Admittedly, from the facts of the case, it is clear that the trial court has disbelieved the prosecution case for offence under Sections 302 and 376 I.P.C. and while acquitting him for the above offence, the trial court observed that though Mst. Amarjeet Kaur was living with the

appellant with her consent but she was less then 18 years of age, therefore, her consent is immaterial Thus, the appellant was convicted for offence under Section 366 I.P.C. Further, in the present case, the occurrence took place in the year 1986 and the appeal is pending before this Court since 1988. Thus, near-about 20 years have elapsed.

In para – 6 of the judgment cited by the learned counsel for the appellant in case of Rajesh (supra), Hon'ble Supreme Court has observed as under :-

> "6.But, at the same time, it also clearly appears that Accused No.1 Navneet and Archana were close to each other while they were studying at Nagpur. Accused No.1 wanted to marry her. Archana's parents had shifted her from Nagpur to Nandura a few months before the incident took place. Archana had completed 18 years and accused No.1 probably believed that she would come with him. Accused No.1 and the appellants were all college-going boys. The incident took place in the year 1991. Considering all these circumstances, we are of the opinion that ends of justice would be met if their sentence is reduced from two years rigorous imprisonment to one years rigorous imprisonment. We, therefore, partly allow these appeals. Though the conviction of the appellants is maintained the order of sentence is modified as stated above."

Following the aforesaid decision and taking

into account the facts that in the present case, the occurrence took place in the year 1986 and the appeal is pending before this Court since 1988 and major part of the prosecution case was disbelieved by the trial court to the extent of offence under Section 302 and 376 I.P.C., therefore, in the interest of justice, while maintaining the conviction of the appellant, the order of sentence passed against the appellant is modified. Accordingly, the sentence awarded to the appellant, which is five years RI is reduced to already undergone by him. The appellant has already remained in custody for a period of one year and nine months i.e. from 7.7.1986 to 23.4.1988. The bail bonds filed by the appellant are discharged. The order of fine imposed against the appellant is also set aside.

With the aforesaid modifications and directions, the appeal stands partly allowed.

(GOPAL KRISHAN VYAS), J.

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